

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT

for the

District of NEW HAMPSHIRE

2020 APR 27 AM 10:53

FILED

CHAD AUSTIN*Petitioner*

v.

Case No. _____

*(Supplied by Clerk of Court)*UNITED STATES OF AMERICA / B.O.P.*Respondent**(name of warden or authorized person having custody of petitioner)*

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Chad Austin
 (b) Other names you have used: N/A
2. Place of confinement:
 (a) Name of institution: FCI BERLIN
 (b) Address: P.O. BOX 9000
Berlin, NH 03570
 (c) Your identification number: 02205-049
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you: United States District Court
District of New Hampshire (Concord)
 (b) Docket number of criminal case: CR.98-131-01-M
 (c) Date of sentencing: 11/12/1999
☐ Being held on an immigration charge
☐ Other (explain): N/A

Decision or Action You Are Challenging

5. What are you challenging in this petition:

☒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention

☐ Immigration detention

☐ Detainer

☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

☐ Disciplinary proceedings

☐ Other (explain): N/A

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: U.S. District Court N.H.

(b) Docket number, case number, or opinion number: same

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Illegal Sentence / B.O.P. Illegal Computation

(d) Date of the decision or action: 11/12/1999

Your Earlier Challenges of the Decision or Action7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: U.S. District Court N.H. / B.O.P.

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: U.S. District Court / B.O.P.

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: U.S. District Court / B.O.P.

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☒ Yes ☐ No

If "Yes," provide:

- (1) Name of court: District of New Hampshire (Concord)
 (2) Case number: Civ.No.02-001-M
 (3) Date of filing: _____
 (4) Result: Denied
 (5) Date of result: 4/18/2003
 (6) Issues raised: Ineffective Standby Counsel; Ineffective Appellate Counsel.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☒ Yes ☐ No

If "Yes," provide:

- (1) Name of court: District of New Hampshire (Concord)
 (2) Case number: 98-cr-131-01-SM
 (3) Date of filing: 3/08/13
 (4) Result: Denied
 (5) Date of result: 4/29/13
 (6) Issues raised: illegal Federal Sentence

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: Sentence is 100% illegal.

The B.O.P. has broken the law in petitioners case and it is A CRIMINAL CRIME. The B.O.P. Can not Make A Federal Sentence.

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes ☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: N/A
 (b) Date of the removal or reinstatement order: N/A
 (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☐ No

If "Yes," provide:

- (1) Date of filing: N/A
 (2) Case number: N/A
 (3) Result: N/A
 (4) Date of result: N/A
 (5) Issues raised: N/A

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: N/A
 (2) Date of filing: N/A
 (3) Case number: N/A

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(4) Result: N/A(5) Date of result: N/A(6) Issues raised: N/A

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☐ No

If "Yes," provide:

(a) Kind of petition, motion, or application: N/A(b) Name of the authority, agency, or court: N/A(c) Date of filing: N/A(d) Docket number, case number, or opinion number: N/A(e) Result: N/A(f) Date of result: N/A(g) Issues raised: N/A

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Illegal Sentence imposed under / Illegal Computation
By BOP. USCS §3584 and 3583 along with USSG §§1B1.3 and U.S. Constitution. See
Memorandum of law argument in support.

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(a) Supporting facts *(Be brief. Do not cite cases or law.):*

On November 12, 1999, Petitioner was sentenced by the Honorable Judge Steven J. McAuliffe out of the District of New Hampshire, CR.98-131-01-M. Judge McAuliffe applied a total offense level of 28 with a criminal history category of VI, which resulted in a sentencing range of 140 to 175 months. Applying USSG §5G1.3 (c), 18 USC §3584(a) and §3583, along with USSG §1B1.3, in the year 1999, under that years Guidelines. Also using Application Note 3 and 4 of 5G1.3(c).

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes☐ No(See MEMORANDUM)
3 pages

GROUND TWO: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

N/A

(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes☐ No

GROUND THREE: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

N/A

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes☒ No

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GROUND FOUR: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

N/A

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: N/A

Request for Relief

15. State exactly what you want the court to do: Immediate release by way of judge order

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

April 20, 2020

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

April 20, 2020



Signature of Petitioner

Signature of Attorney or other authorized person, if any